



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*86 Chambers Street  
New York, New York 10007*

May 18, 2018

By ECF

The Honorable Naomi Reice Buchwald  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *The Century Found. v. U.S. Dep't of Educ.*, 18 Civ. 3581 (NRB)

Dear Judge Buchwald:

This Office represents defendant the U.S. Department of Education ("ED") in the above-referenced action brought pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. As alleged in the complaint, *see* Dkt. No. 1 ¶ 2, this case concerns Plaintiff's March 21, 2018, FOIA request for ED's draft staff analysis of the Accrediting Council for Independent Colleges and Schools's ("ACICS's") application for initial recognition as an accrediting agency pursuant to 34 C.F.R. Part 602 ("Draft Analysis").

ED informed Plaintiff by letter dated April 23, 2018, of its determination that the Draft Analysis would be released to Plaintiff in full pursuant to 5 U.S.C. § 552(a)(6)(C)(i). *See* Dkt. No. 10-1. After ACICS filed a motion to intervene in this action on April 27, 2018, *see* Dkt. No. 9, ED advised Plaintiff by letter dated May 4, 2018, that the release of the Draft Analysis was temporarily suspended.

Because ED has issued a determination that the Draft Analysis will be released, pursuant to FOIA it has an obligation to make the record "promptly available." 5 U.S.C. § 552(a)(3)(A). At the same time, ED does not wish to prevent ACICS from asserting any legitimate interests that would require the record to be withheld. Accordingly, ED would ask that the court clarify whether it should withhold the record during the pendency of this action. Absent a court order enjoining ED from releasing the Draft Analysis to Plaintiff, it is ED's intention to release the Draft Analysis in ten days, or on May 28, 2018. ED provides this notice to permit ACICS to seek relief from this Court as appropriate.

I thank the Court for its attention to this matter.

Respectfully submitted,

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Southern District of New York

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